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CHARLES ELMORE GROPLEY
CLERK

No. 133

IN THE
Supreme Court of the United States

IN THE MATTER OF NICHOLAS J. CURTIS
Petitioner,

vs.

UTAH FUEL COMPANY, ET AL.
Respondents.

Docketed Under No. 1382

ON PETITION FOR WRIT OF CERTIORARI

REPLY BRIEF DIRECTED AGAINST THE
BRIEF FILED BY THE ABOVE NAMED RE-
SPONDENTS, UTAH FUEL COMPANY ET AL.

NICHOLAS J. CURTIS LL. B.,
Petitioner Appearing Pro Se,
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To:

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*Reply Brief***REPLY BRIEF DIRECTED AGAINST THE SO-CALLED
BRIEF FILED BY RESPONDENTS UTAH FUEL
COMPANY, ET AL.**

Petitioner respectfully requests this Honorable Court to refuse to consider the so-called brief of respondents, Utah Fuel Company, et al. in opposition to petition of Nicholas J. Curtis for writ of certiorari, brief dated June 26, 1945, filed in this cause, upon the following grounds:

1. The said brief so filed is not anywhere near of like character with the brief required of the petitioner; and the brief filed in the Circuit Court of Appeals, Third Circuit, on appeal No. 8664, copies of which have been filed with the Clerk of this Court and motion made to the Court and copy served upon the respondents for the Court to consider the same.
2. The said respondents failed to traverse any of the facts stated by the petitioner in his Record, Petition, Brief, Appendix, and Exhibits, and therefore the statements so made should be taken as true.
3. A copy of any written instrument which is an exhibit to a pleading is a part thereof for all purposes, Federal Rule 10, (c) of the Federal Rules of Civil Procedure for the District Courts of the United States following section 723c of Title 28, U. S. C. A.
 - b. Under the authority of the said provisions of said clause as found in said paragraph of said rule the Memorandum Opinion of Judge Thomas G. Walker as it is set

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forth on pages 17-22 of the Bill on the Equity side of the District Court, is a part and particle of the Bill on the equity side of said court. To the same effect and with like force with the quotations made in paragraphs 21-22-23 on pages 24-27-30 of the said Bill in Equity. On this question petitioner relies upon the following quotations of authorities and statutes:

Hughes Federal Practice, Sec. 20201, p. 419. Fed. Rule 10, e.

Likewise the practice of incorporating exhibits attached to a pleading into the pleading and making it a part thereof has long been followed in equity causes in the federal courts. 5. (*Marshal v. Turnball*, 34 F. 827; *Surget v. Byers*, Fed. Cas. No. 13,629, Hempst. 715, 15 L. Ed. 670) and is usually permitted in Code Jurisdictions. 6. *Stephens v. American Fire Ins. Co.*, 14 Utah 265, 47 P. 83; *Hudson v. Scottish Union & Nat. Ins. Co.*, 110 Ky. 722, 62 N. W. 513; *American Freehold Land Mortgage Co. v. McManus*, 68 Ark. 263, 58 S. W. 250, in equitable actions. See also: *Peoples Natural Gas Co. v. Federal Power Commission*, 127 F. 2d 153, 75 U. S. App. D. C. 235, certiorari denied 316 U. S. 700, 62 S. Ct. 1298, 86 L. Ed. 1769; *Andrews v. Equitable Life Assur. Soc. of U. S.*, 124 F. 2d 788, certiorari denied, 316 U. S. 682, 62 S. Ct. 1270, 86 L. Ed. 1755; and also: *Moores Fed. Pr.* page 612 and cases cited and its pocket part, same page and cases cited; also *Story's Equity Pleading*, 10th Edition. Ch. XX, page 746 et seq. See's. 884, 885, 889, 890, 891.

4. The said respondents in their said so-called brief call the Honorable Court's attention to the Opinion of Dis-

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trict Judge Guy L. Fake but failed to traverse the facts stated in reasons X, Y, Z on pages 80-to first part of page 85 of the sworn petition for certiorari: Q. Inv. 7 on page 128 of brief in support of said petition; paragraph 10 of Ch. D., pages 19-26, Petition; and paragraph 13 of Ch. D. on page 27 of Petition for writ of certiorari; and paragraph 4, pages 8 to top of page 11, of the brief to the Circuit Court of Appeals, Third Circuit. To the same effect in the brief they filed on the appeal to the said C. C. A. 3rd C. 8664.

b. The first undersigned counsel in said brief is the same person who staged the mob in the district court and offered to pay to Judge Fake the full amount involved if he would destroy the petitioner herein. The Opinion in question is tainted with duress and fraud.

c. Fraud is a generic term which embraces all the multifarious means which human ingenuity can devise and are resorted to by one individual to gain an advantage over another by false suggestions or by suppression of the truth (Citations): 37 C. J. S. Sec. 1 at page 204.

d. Fraud has also been defined as any cunning, deception, or artifice used to circumvent, cheat, or deceive another: 37 C. J. S. Sec. 1 at page 205. Citing Note 9 under which numerous cases are cited.

e. Duress is by some authorities classified as a species of fraud: 37 C. J. S. Sec. 1, at page 207. Citing Note 32 under which there are cited numerous cases.

f. Duress is gross species of fraud: *Coughlin v. City of Milwaukee*, 279 N. W. 62, 227 Wis. 357, 119 A. L. R. 990.

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g. Bouviers Legal Dictionary defines Duress (at page 959) as "Personal restraint, or fear of personal injury or imprisonment." Citing: *Hazelring v. Donaldson*, 2 Metc. (Ky) 445, and cases quoted thereunder.

h. Webster's New International Dictionary, 2d Ed., defines Duress as: "1. Hardness; harshness; cruelty; affliction. 2. Imprisonment; also constraint; pressure; compulsion. 3. Compulsion or restraint by which a person is illegally forced to do or forbear some act."

i. Only a revolutionary chieftain will resort to those means to which District Judge Guy L. Fake and H. Collin Minton, Jr. resorted to destroy their adversary.

5. The Equity suit (Civil No. 2800) in the district court was allocated to come up for hearing before a Court of three judges. Notice to that effect was given by the Clerk to the plaintiff below advising him to prepare and submit pleading for three judges; and thereupon plaintiff below and petitioner here acted accordingly by preparing and filing with the Clerk additional pleadings or copies of the original on file, together with copies of briefs for each one of the would be three judges. Notwithstanding these said facts, District Judge Guy L. Fake took the law into his own hands and proceeded all by himself and his companion in conspiracy, H. Collin Minton, Jr., and thus acting alone, District Judge Guy L. Fake had no power or authority to dismiss the suit and falsify its record.

The procedure in such cases is prescribed and governed by the Act of Congress of April 6, 1942, Ch. 210, Sec. 3, 56 Stat. 199, to wit: United States Code. Supp. IV. 1941-1945. Title 28 (Judicial Code and Judiciary) Sec. 729.

*Reply Brief**Three Judge District Court Action for Interlocutory Injunction and Final Hearing; Powers of a Single Judge.*

"In any action in a district court wherein the action of three judges is required for the hearing and determination of an application for interlocutory injunction and for the final hearing by reason of the provisions of section 47, 380, or 380a of this title, or section 18 of Title 15 and section 44 of title 49, as amended by section 1 of the Act of April 6, 1942, chapter 210, any one of such three judges may perform all functions, conduct all proceedings, except the trial of such action, and enter all orders required or permitted by the Rules of Civil Procedure for the District Courts of the United States in effect at the time, provided such single judge shall not * * * dismiss the action, or enter a summary or final judgment on all or any part of the action." (April 6, 1942, Ch. 210, See. 3, 56 Stat. 199.

It follows that District Judge Guy L. Fake dismissed the equity suit without judicial authority to do so and therefore his Opinion in the case is null and void.

6. The respondents in their said brief quote the defects which District Judge Guy L. Fake set forth in his opinion as being present in the bill in equity or, on the equity side of the court, but they do not say a word traversing, to-wit:

a. "We will see what we can do." Fake, D. J. to H. Collin Minton, Jr., counsel pro se, Utah Fuel Company, et al. in answer to his offers to pay to said judge the full amount involved.

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b. "All these is illegal, watch the lawyers; watch Wienberger, he might take the case." Fake, D. J. to said Counsel.

c. The defects, if any, do not justify the court to dismiss the suit, for the following reasons:

1. Title 28 U. S. C. Sec. 777. Defects of form; Amendments.

No summons, writ, declaration, return, process, judgment, or other proceedings in civil causes, in any court of the United States, shall be abated, arrested, quashed, or reversed for any defect or want of form; but such court shall proceed and give judgment according as the right of the cause and matter in law shall appear to it, without regarding any such defect or want of form; * * * and such court shall amend every such defect and want of form * * *; and may at any time permit either of the parties to amend. (R. S. Sec. 954.)

Montgomery's Manual of Federal Jurisdiction and Procedure, 4th Edition, 1942, Sec. 184. Amended and Supplemental Pleadings—Rule 15.—Rule 15 of the Rules of Civil Procedure deals with the amended and supplemental Pleadings.

The purpose of the rule is to assure the determination of controversies in view of their merits, and not with respect to procedural niceties. 14-18. *Overfield v. Pennroad Corporation*, (D., Pa. 1941.) 39 F. Supp. 482. * * * (3) The rules of civil procedure expressly indicate that where leave of Court is required for an amendment, such "leave shall be freely given when justice so requires". Rule 15 (a), 28 U. S. C. A. following Sec. 723c, in the interest of assuring

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the determination of controversies upon the merits and not upon procedural niceties * * * (11) * * * In the interest of the expeditious and equitable disposition of causes, amendments which tend to prevent a failure of justice should be liberally allowed. * * * See also *Hughes Fed. Pr.*

Rule 15. Amended and Supplemental Pleadings. Section 20851, holding: The rule is patterned upon former Equity Rules 19, 28, 32, 34, and 35. Thus the plaintiff may amend his complaint as of right without leave at any time before the answer is served. 5. H. F. Pr. Sec. 20862, p. 511. *Bugeln and Smith v. Standard Brands*, 27 F. Supp. 399; "shall be freely given when justice so requires". H. F. Pr. Sec. 20863, p. 512; Under Rule 15 (a) amendments are to be liberally allowed. The new rules contemplating decisions of controversies on the merits rather than dismissal thereof on technicalities; and state practice restricting amendments is no longer binding on the Federal Courts. 12. *Moore v. Illinois Cent. R. Co.*, 24 F. Supp. 731; *Downey v. Palmer*, 27 F. Supp. 993 (at page 513.)

Like under the equity practice as above indicated, so also under Rule 15 (a) leave to amend follows as a general rule, as a matter of course, on dismissal on motion, especially in view of the specific mandate "leave shall be freely given when justice so requires." 13. *Earhard v. Valerius*, 25 F. Supp. 754.

7. The said respondents point out or, are calling the Honorable Court's attention to, the answer which they corruptively filed but failed to traverse the facts set forth in Reasons P. Q. R., pages 54-57 of the petition.

8. Where (as in the present case) the bill set forth matter calling for equitable relief, no matter what its de-

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ficiencies of form, the plaintiff can not be required to amend in view of Rule 18 (Equity Rule 18) *Williams v. Pope*, 215 Fed. Rep. 1000.

Wherefore, the petitioner, Nicholas J. Curtis, urges this Honorable Court:

1. To refuse to consider the respondents' brief referred to above to which this reply brief is directed;
2. To grant the Writ of Certiorari in the case;
3. To try the cause now before it and formulate a just and legal decision to guide the court below in the final proceedings to be there taken in conformity with the decision of this Court; and
4. To make such provisions in its decision disqualifying District Judge Guy L. Fake from proceeding, in any way, any further in the above captioned cause or causes.

Very respectfully submitted,
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Dated this 13th day of
July, A. D., 1945.

To: H. COLLIN MINTON, JR.,
and his co-counsel,
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